

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Petition for Approval of the Energy	:	07-0540
Efficiency and Demand-Response Plan	:	
pursuant to Section 12-103(f) of the Public	:	
Utilities Act.	:	

ORDER ON REHEARING

By the Commission:

On March 7, 2008, the Commonwealth Edison Company ("ComEd") filed, in conjunction with Commission Staff, a Petition for Rehearing, in which, the Petitioners contested only one finding made in the final Order that issued in this docket on February 6, 2008. The finding contested is that in order for the independent evaluator required by 220 ILCS 5/12-103(f)(7) to be "independent," this Commission must have control over the hiring and firing of that evaluator. (See, Final Order at 33).

These Petitioners contended, among other things, that because this Commission is an Illinois agency, active participation by this Commission in the hiring and firing of this evaluator must be done in accordance with the Illinois Procurement Code, which would substantially delay implementation of 220 ILCS 5/12-103 and would, therefore, violate 220 ILCS 5/12-103(b) and (c), which require ComEd to implement its Energy Efficiency and Demand Response Plan by no later than June 1, 2008. Commission involvement in the day to day activities in the procurement of the independent evaluator, they contend, would jeopardize critical pre-implementation efforts to develop systems for protocols, the development of tracking systems and other aspects of measurement and evaluation. (Petition for Rehearing at 5-6).

The Petitioners point out that, because this Commission is a state agency, it is subject to extensive regulation pursuant to the Illinois Procurement Code concerning the hiring of a third-party contractor. (See, 30 ILCS 500/1-1 *et seq.*). However, the new statute requires utilities to implement its Energy Efficiency and Demand Response Plan by no later than June 1, 2008. (See, e.g., 220 ILCS 5/12-103(b)). They aver that the fact that Section 12-103 of the Act only provides for a few months between the time when the Commission must approve or deny approval of a utility's Energy Efficiency/Demand Response Plan (no later than February 15, 2008) and when a utility must commence operation of such a plan, indicates that the General Assembly did not intend for the Commission to be the entity that conducts all of the activities involved in the hiring of the evaluator. This is true, the Petitioners maintain, because it is simply not

possible to hire the evaluator within the statutorily-required, and compressed, timeframe and comply with the Illinois Procurement Code. (Petition for Rehearing at 5-6).

The Illinois Attorney General (the “AG”) and the Citizens Utility Board (“CUB”) filed a joint response to the Petition for Rehearing, in which, they set forth, with specificity, a procedure, by which, this Commission would have ultimate control over the hiring and firing of the independent evaluator, but, ComEd, and its independent Advisory Committee would be responsible to do the work necessary to hire that evaluator, thereby eliminating the conflict between Section 12-103 of the Public Utilities Act and the Illinois Procurement Code. Both ComEd and Commission Staff filed Replies, in which, they voiced approval of the procedure recommended by the AG and CUB. It is as follows:

ComEd, would develop, with input from its stakeholder advisory Committee, a Request for Proposals (an “RFP”) to solicit bids for an independent evaluator;

ComEd would then file the RFPs as a compliance filing in this docket;

ComEd would select, with stakeholder input, an independent evaluator;

ComEd would then submit, as a compliance filing in this docket, its contract with the independent evaluator, which would be selected from the firms that responded to the RFP; and

This contract must expressly provide that the Commission has the right to: a) approve or reject the contract; b) direct ComEd to terminate the evaluator, if the Commission determines that the evaluator is unable or unwilling to provide an independent evaluation; and c) approve any action by the utility that would result in termination of the evaluator during the term of the contract.

(AG/CUB Response at 2).

Analysis and Conclusions

When the General Assembly enacts legislation, it is presumed that it did not intend absurdity, inconvenience or injustice. (*Illinois Crime Investigating Comm. v. Buccieri*, 36 Ill. 2d 556, 561, 224 N.E.2d 236 (1967); *Harris v. Manor Healthcare Corp.*, 111 2d. 350, 362-63, 489 N.E.2d 1397 (1986)). It also must be presumed that the General Assembly intended to enact a valid law. (*Morton Grove Park District v. American National Bank & Trust Co.*, 78 Ill. 2d 353, 363, 399 N.E.2d 1295, 1299 (1980)). Statutes must be construed

in a manner that avoids a construction that would raise doubts as to their validity. (*Id.*). Additionally, when the language in a statute is capable of more than one interpretation, a trier of fact may look beyond the language to consider the legislative purpose of the statute. (*Shields v. Judge's Retirement System of Illinois*, 204 Ill. 2d 488, 494, 791 N.E.2d 516 (2003)).

Here, the articulated purpose of the statute is:

It is the policy of this state that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission and distributed infrastructure.

(220 ILCS 5/12-103(e)). The articulated goal of reducing the delivery load of electric utilities would be impeded, unnecessarily, if this Commission engaged in the day-to-day activities involved in the hiring of the independent evaluator. This is true because such a process would require this Commission to procure the independent evaluator through the Illinois Procurement Code, resulting in a delay of several months, making the hiring of this evaluator occurring on or before the statutory deadline of June 1, 2008 impossibility. Therefore, we conclude that the General Assembly did not intend for this Commission to be involved in the day-to-day tasks regarding the hiring and firing of the independent evaluator.

In essence, the AG/CUB contend that the language in the final Order in this docket finding that this Commission controls the hiring and firing of the independent evaluator means that this Commission has only a supervisory duty to oversee the day-to-day operations involved in hiring and firing of the independent evaluator, as opposed to doing those day-to-day tasks. We agree.

We note that the evaluator would not be "independent," as required by statute, if ComEd had total control over that evaluator. However, that does not mean that this Commission should be involved in the designing of an RFP, conducting interviews, and doing the many other tasks involved in hiring this evaluator. Rather, it means that this Commission has a supervisory capacity regarding the hiring and firing of this evaluator, meaning that ComEd must gain Commission consent to make the hiring and firing decisions regarding this evaluator.

We further note that the approach taken by the AG/CUB for gaining Commission consent is a reasonable one. ComEd would make compliance filings in this docket regarding its contractual relationship with the evaluator, as is set forth above. Pursuant to this approach, if Commission Staff had any concerns after review of these compliance filings, it could issue a Report to the Commission expressing its concerns, and, in the appropriate situation, this Commission could open a docket for the purpose of determining whether ComEd violated Section 12-103 of the Public Utilities Act. (220 ILCS 5/12-103).

Finally, the process proffered by the AG/CUB is a simple one, and it is one, to which, no party has objected. We therefore conclude that ComEd must follow this procedure.

Finding and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (3) the Commonwealth Edison Company shall file any Request for Proposals for its independent evaluator required by 220- ILCS 5/12-103(f)(7) within 10 days of its issuance, as a compliance filing in this docket;
- (4) the Commonwealth Edison Company shall submit any contract with an independent evaluator as a compliance filing in this docket within ten days of its execution;
- (5) any contract between the Commonwealth Edison Company shall provide that this Commission has the right to: approve or reject the contract; direct it to terminate the evaluator, if the Commission determines that the evaluator is unable or unwilling to provide an independent evaluation; and approve any action by the utility that would result in termination of the evaluator during the term of the contract.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Commonwealth Edison Company shall comply with findings three (3) through five (5) above.

IT IS FURTHER ORDERED that this order is final and is not subject to the Administrative Review Law.

By Order of the Commission this 26th day of March, 2008.

(SIGNED) CHARLES E. BOX

Chairman